

From: Ben Snyder
To: Microsoft ATR
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Subject: Microsoft Settlement

The following statements about the Microsoft-DOJ settlement are submitted under the provisions set forth by the Tunney Act.

Section III.D:

According to the settlement, Microsoft must disclose "via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product."

It should be made known that the least expensive, also the most basic, MSDN subscription is approximately \$200. This may be cost prohibitive to an extremely small software firm, and possibly even more so to an individual who may desire to develop software for the Windows Operation Systems. If someone were developing software for free distribution, it is doubtful the individual would be able to justify the cost of obtaining the documentation for the APIs.

Section III.J.1:

According to the settlement, Microsoft will not be required to "document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria."

Who decides if the APIs in question fall into these categories? If there is no requirement to even document the existence of these APIs, then their existence and purpose may be perceived differently by each individual, and therefore there is no consensus on if the APIs in question fall into the categories listed above.

Overall, it can be said that the settlement overly

favors business, even the defendant is given too much favor in some cases. By favoring business rather than the populace, the monopolistic characteristic of difficulty in entering the market still exists, making it difficult for a small firm or individual from competing fairly.

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